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Before the
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL

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American Public Communications Council
July 1, 1996

SUMMARY

The independent public payphone ("IPP") industry has waited eight years for the Commission to undertake this proceeding. Now that the Commission has a statutory mandate to ensure fair compensation for all calls and to eliminate the competition-inhibiting payphone subsidies and discriminatory telephone company practices, the Commission must take firm, decisive action to set the industry on a solid competitive foundation for the future.

Regarding compensation, the Commission's mandate is to ensure fair compensation of payphone service providers for all interstate and intrastate calls The statute does not permit the Commission to leave fair compensation to the vagaries of economic relations or other regulatory action that may or may not occur. Therefore, the Commission should prescribe a uniform compensation rate applicable to all calls. This will enable the industry to break away from its unhealthy over-dependence on 0+ revenues, which recent events demonstrate are an unstable income source regardless of which carrier is presubscribed to the payphone.

The uniform compensation prescribed by the Commission should include a uniform rate applicable to local coin calls In most jurisdictions, local coin rates have not been allowed to increase significantly for a decade or more The inability to charge a fair price for local coin calling has prevented IPP providers from competing effectively and has driven the entire industry to overreliance on interstate 0+ revenue. Under Section 276, the local coin rate is now the Commission's ultimate responsibility. Setting a uniform maximum local coin rate of 40 cents will enable payphone service providers to obtain fair compensation for the use of payphones, and will increase consumer certainty about the charges for using payphones.

Fair compensation also must be prescribed for other calls, including coinless operator service, access code, subscriber 800, and directory assistance calls. A set use fee is conceptually the most appropriate form of compensation, but APCC does not object to allowing carrier discretion in recovery of the charge. All types of carriers, including local exchange carriers ("LECs") should be subject to compensation obligations for access code and subscriber 800 calls. The compensation mechanism for these calls should be similar to the existing access code compensation mechanism All carriers that are able to track calls must pay compensation on a per-call basis. Administration of the compensation system should be reformed to ensure that LECs have an incentive to correctly identify IPPs to carriers, and to ensure that carriers have an incentive to pay valid compensation claims.

The amount of compensation prescribed should be 40 cents if compensation is prescribed for all calls, including local coin calls. This level is at the low end of the range of potentially fair rates based on market value surrogates. If local coin call compensation is not prescribed, then the compensation rate must be substantially higher -- e.g., 80 cents per call -- in order to ensure that IPP providers are fairly compensated.

It is critical for the Commission to prescribe interim compensation for IPP providers for access code and subscriber 800 calls pending the implementation of a permanent, comprehensive compensation system. IPP providers have been uncompensated for subscriber 800 calls for more than 5 years after Congress directed the FCC to consider the need for such compensation. The volume of these calls, meanwhile, has exploded, and currently equals about 100 calls per payphone per month. IPP providers need immediate relief from the revenue squeeze created by continuing coin rate restrictions and the ever shrinking volume of compensable coinless calls.

Interim compensation for these calls should be set, based on actual calling data, at a flat rate of $40 per month, and should be paid by carriers based on their share of the market. Interim access code compensation based on 40 cents per call also should be prescribed in place of existing access code compensation.

Strong safeguards must be adopted to ensure an end to LEC subsidies and discrimination favoring their payphones. Regarding these issues, APCC adopts the views stated in the comments of the Georgia Public Communications Association.

There are a number of concerns that must be addressed before the Bell companies can be granted authority to select interLATA carriers serving their payphones. With as much as 85% of the market in their territories, the Bell companies have the potential to extract supracompetitive 0+ commission levels that will enable them to aggressively extend their market power in the payphone market. Safeguards to avoid squelching payphone competition should include (1) limits on the extent of a Bell company's ability to presubscribe to a single carrier and extract commission levels that far exceed what any competitor could obtain, and (2) conditioning interLATA selection authority on the Bell company's agreement to full structural separation of payphone operations.

The Commission can provide for "public interest payphones" by instituting, in collaboration with state commissions, a program modeled on California's. There are a number of options for structuring the funding and implementation of the program. However, subsidies should be narrowly targeted so as not to unnecessarily interfere with the operation of market forces. The California criteria should be refined to ensure that only those payphones that are genuinely needed and that would not be provided absent a subsidy are eligible for funding.

The Commission also should adopt a special enforcement program for payphone regulations that enlists the industry in ensuring compliance. Every payphone provider could be required to contribute to a self-enforcement fund, e.g., from a specific percentage of "dial-around" compensation revenues. Inspections, complaint investigation and other functions funded by the program would be administered by an entity chosen by the Commission.

American Public Communications Council
July 1, 1996

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In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL

The American Public Communications Council ("APCC") hereby comments on the Commission's Notice of Proposed Rulemaking, FCC 96-254 released June 6, 1996 ("Notice"), to implement Section 276 of the Communications Act of 1934, 47 U.S.C. § 276, as added by Section 151(a) of the Telecommunications Act of 1996, Pub L. 104-104 (Feb. 8, 1996).

I. INTRODUCTION AND BACKGROUND

In this proceeding, the Commission is under a Congressional mandate to, at long last, take the steps necessary to "promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public" 47 U.S.C. § 276 (b)(1). The independent payphone industry has been waiting for eight years for the Commission to undertake this proceeding. As mentioned in the Notice, ¶ 43, the reclassification of Bell company payphones was first requested in a petition filed by the Public Telephone Council on July 18, 1988. Another petition, requesting the Commission to eliminate discrimination in the application of end user common line charges, was filed by APCC seven years ago. In the Matter of the American Public Communications Council, Petition for Declaratory Ruling That End User Common Line Access Charges May Not Be Assessed on Competitive Public Pay Telephones, filed April 21, 1989.[1]

It was 5½ years ago that APCC first requested compensation for subscriber 800 calls -- which now comprise half of all coinless calls. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Comments of the American Public Communications Council, filed April 12, 1991 The Commission's decision denying such compensation was finally reversed and remanded by the Court of Appeals in May 1995, more than one year ago. Florida Public Telecommunications Ass'n v. FCC, 54 F 3d 857 (D.C. Cir. 1995).

The Telecommunications Act of 1996 now directs the Commission to take these long-awaited actions, and others, to set the payphone industry on a solid regulatory foundation that will allow competition to flourish and deliver its promised benefits to the public. "In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public", the Act requires the Commission to adopt regulations that (1) "ensure that payphone service providers are fairly compensated for each and every completed intrastate and interstate call" (47 U S C. § 276(b)(1)(A)), (2) "discontinue . . . all intrastate and interstate payphone subsidies" by local exchange carriers ("LECs") (Id., § 276(b)(1)(B)), and (3) ensure that Bell companies do not "prefer or discriminate in favor of [their] payphone service" (Id., §§ 276(a)(2), (b)(1)(C))

[1] In 1990, the Senate committee report on the bill on the Telephone Operator Consumer Services Improvement Act of 1990 stated: "The Committee believes the FCC should address these petitions promptly." S. Rep. No. 439, 101st Cong., 2d Sess 5 (1990).

With the exception of the Commission's mandate to ensure fair intrastate compensation, each of these actions could have been taken within the Commission's pre-1996 authority under the Communications Act. Now that Congress has directed the Commission to take these long-awaited actions, and has expanded the Commission's authority to include the establishment of fair intrastate compensation, the Commission must take decisive action. The Commission is under an affirmative duty to act, to ensure fair compensation; the Commission cannot continue with a wait-and-see attitude that leaves fundamental problems of fair compensation to the vagaries of economic relations or other regulatory action that may or may not occur. The issues must be addressed in a comprehensive fashion that includes <u>all</u> payphones and <u>all</u> calls. In particular, the Commission should not delay prescribing a uniform compensation fee applicable to every interstate and intrastate call, including local coin calls. <u>See</u> Section II. below.

Further, APCC agrees with the Commission that the compensation and reclassification provisions of Section 276(b)(1)(A) and (B) apply to all LEC payphones, including those operated by non-Bell LECs. <u>Notice</u>, ¶ 14, n. 47. In addition, as noted above, the Commission had authority even before the Telecommunications Act of 1996 to apply most of the other measures mandated by Section 276 of the Act to LECs generally, including non-Bell LECs. In particular, the Commission has, and should exercise, authority under the general provisions of the Communications Act to apply safeguards against subsidies and discrimination to non-Bell LECs. <u>See</u> Comments of the Georgia Public Communications Association in this proceeding.

II. COMPENSATION

Under Section 276(b)(1)(A), Congress has directed the Commission to prescribe regulations that

> establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation[ ]

47 U.S.C. § 276(b)(1)(A)

In implementing the compensation provision, as well as the other provisions of Section 276, the statute expressly provides that the Commission must craft its regulations so as to "promote the widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. § 276(b)(1).

A. Scope of Payphone Calls Covered by this Rulemaking(¶¶ 15-23)

The Commission's Notice initially asks how the Commission should go about ensuring that payphone service providers are fairly compensated for "each and every call." Should the Commission attempt to determine, for each category of call in isolation, whether a fair level of compensation is available, or should the Commission look at the issue of compensation as a whole and determine a comprehensive approach to compensation that is applicable across all categories of calls?

APCC submits that the latter approach is required The Act directs the Commission to establish a new "per call compensation plan." A new plan is necessary because the payphone industry has never been permitted to price payphone service so as to allocate the recovery of payphone costs in an equitable and balanced fashion among the diverse categories of calls made from payphones. LEC payphone divisions have relied on subsidy mechanisms such as the carrier common line charge and other regulated, local exchange and exchange access revenues to ensure recovery of their payphone costs IPP providers have been forced to adhere, for the most part, to the subsidized rate structures developed by the LECs and state regulatory commissions. In order to recover their costs, IPP providers have been driven to disproportionate reliance on revenue from a single category of payphone traffic -- 0+ interstate calls The result has been a system of dramatic imbalances in cost recovery on the various categories of calls made from payphones In this environment, IPP providers are excessively vulnerable to external changes that affect the traffic on which forces beyond their control have made them dependent for revenue streams.

In order to provide a profile of payphone industry traffic patterns, APCC collected data from more than 20 diverse payphone companies operating more than 100,000 payphones. APCC collected and analyzed data from samples comprising several thousand payphones during the months of March, April and May.[2] The results of this data collection project are summarized in Attachment 1. The payphones produced an average of about 700 completed calls per payphone per month. About 500 of these were coin-paid calls Based on analysis completed to date, we believe that total coin revenue from the sample averaged about $150/month, or roughly 30 cents per call, and that about 90% of the coin-paid calls are local (with the additional 10% that are coin-paid toll calls increasing the average coin revenue from about 25¢ to 30¢ per call). However, we have not completed our review of the data on coin revenue and percentage of coin calls that are local.

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[2] Some of the participating payphone companies provided data going back as far as 1993. However, the first relatively comprehensive data sets were produced in 1996.

On the coinless side, the average monthly number of completed coinless calls made from the payphones in the sample was about 200.[3] For most providers the only coinless calls that generate significant revenue are zero plus (0+) or zero-zero (00-) calls that are routed to a presubscribed operator service provider.[4] In the sample, the payphones generated an average of about 30 0+ and 00- calls, only 15% of the total coinless calls and 4% of total calls. This represents a 50% reduction from 1991, when APCC estimated there were a total of 60 intrastate and interstate coinless calls per month from a sample of payphones. See Comments of APCC in CC Docket No. 91-35, October 1991, Exh. 2. The remaining coinless calls, on average, included 40 access-code calls, about 100 "unmatched" or subscriber 800 calls, 14 directory assistance calls (overwhelmingly local (411)), and 10 "zero-minus" calls (zero without any additional digits).[5] With few exceptions, none of these remaining coinless calls generate significant compensation.

Of the 30 revenue-generating coinless calls, most are intrastate calls. The rates for intrastate 0+ calls frequently are capped by regulation at the state level. We believe that no more than 40% of these calls, or 12 calls per payphone per month on average, are interstate calls. The result is inordinate pressure to charge higher rates on this dwindling number of interstate 0+ calls in

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[3] Most of the equipment used in the study records coin and coinless calls as "calls" if the equipment detects indication of an "answer" on the line. For coin calls and subscriber 800 calls, we believe this approach generally can be expected to yield a reasonably accurate count of completed calls. For access code and 0+ calls, this approach would overcount complete calls, since calls that are "answered" by a carrier's call processing platform are not necessarily completed. Therefore, an access code call or 0+ call was counted as complete only if the elapsed time exceeded 60 seconds

[4] FCC-mandated dial-around compensation addresses only a small percentage of the remaining coinless calls, and does not currently yield substantially more than $6.00 per payphone per month.

[5] These statistics do not include 911 calls, which are not charged for and which are not compensable under the statute, or calls to repair numbers and the like.

order to make up for the non-revenue producing coinless calls and to supplement the inadequate revenue from local coin calls, as discussed below Interstate 0+ calls are being used as a source of subsidy for virtually all other categories of calls This is unfair to both the consumer and the payphone service provider The resulting complaints by consumers of overcharging at payphones are well known. Less well understood is the economic destabilization of a payphone industry that is over-dependant for its economic survival on a small and dwindling number of calls making up a tiny fraction of the total use of the payphone

1. Forced Reliance on the 0+ Subsidy Must End

This instability threatens IPP providers regardless of which OSP they choose as the recipient of 0+ calls. Of course, those IPP providers that select a high-priced OSP that pays a large commission on each call must accept that any reasonably savvy consumer will dial-around to a more familiar carrier, and that the commission payments could be interrupted by the imposition of rate ceilings or the equivalent

However, even those IPP providers that take the "high road," and presubscribe to a name-brand carrier such as AT&T to ensure the comfort of end users, have not found a secure economic harbor. Over the last few years, AT&T has targeted IPP providers with a double-edged promotion campaign. On the one hand, IPP providers were offered the "carrot" of more attractive commission rates than AT&T had previously offered On the other hand, AT&T used statistical data to brandish the "stick" of substantially higher "dial-around" rates -- due to AT&T's majority share of overall "1+" telephone subscription traffic -- if an IPP provider failed to pick

AT&T. This campaign was so effective that, according to some estimates, more than 50% of IPPs now send 0+ traffic to AT&T.[6]

Recently, however, AT&T has adopted a new strategy for end users. Even while it continues to tout to IPP providers the virtue -- and necessity -- of presubscribing to AT&T to minimize dial-around, AT&T is now telling consumers that, to be sure of reaching its network, "Always dial 1-800-CALL-ATT." See Attachment 2. AT&T's evident purpose is to ensure that, now that the Mutual Honoring Agreements[7] are terminating, AT&T customers at LEC payphones will not reach a network where they are unable to use their "proprietary" ATT cards.

Whatever AT&T's motivation, the effect is to make many IPP providers feel as if they've been taken for fools.[8] The message for IPP providers is: "it doesn't really matter who you pick; your 0+ traffic will get smaller and smaller no matter what you do."

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6 Three major AT&T "aggregators" alone account for 100,000-150,000 payphones, or roughly one-third of all IPPs, presubscribed to AT&T.

7 These agreements, entered at the time of the AT&T divestiture, provided for the Bell companies and AT&T to provide mutual validation of calling cards issued by each. As a result, AT&T customers dialing 0+ to make intraLATA calls on the Bell company networks (i.e., from Bell payphones) could use their AT&T proprietary cards because Bell companies (unlike IPP providers!) were able to obtain validation of those cards. With the termination of the agreements, there have been reports of caller confusion (and consequent recriminations between AT&T and various Bell companies) when AT&T customers could no longer use their AT&T cards while dialing 0+ intraLATA calls from Bell payphones.

8 At the same time that AT&T was implementing this shift, it was renegotiating IPP contracts to provide that 1-800-CALL-ATT calls would not earn the commission rate from a presubscribed payphone, even where AT&T is the presubscribed OSP. Instead, 1-800-CALL-ATT calls would be compensated as dial around calls at the lower rate of $.25 pursuant to a waiver allowing AT&T to pay dial around compensation on a per call basis. AT&T's promotions even tell consumers not to dial 10288-0 ---- a dialing sequence that, unlike 1-800-CALL-ATT, still gains commission payments under AT&T contracts. All this is particularly ironic considering that only a few years ago, AT&T "trained" its subscribers to dial 0+ first and hang up if they didn't hear "AT&T." AT&T had to be admonished to produce an effective 800 access code.

In describing this sequence of events, APCC is not intending to "slam" or single out AT&T. However, it is critical for the Commission to clearly understand the forces at work in the payphone marketplace. Already, the vast majority of coinless calls are dial-around calls on which no commission payment can feasibly be earned. In addition to 1-800-CALLATT, there is MCI's heavily promoted 1-800-COLLECT, the numerous other access codes used by MCI, Sprint, and other carriers, and of course the endless increase in subscriber 800 calling. In the future, there will be even fewer coinless calls that can earn commissions

In this environment, the Commission's mandate is clear. To ensure that PSPs are fairly compensated on each and every call, the Commission should prescribe a fair, uniform payphone fee that applies to each and every call. This approach will end the forced dependence on interstate 0+ subsidies that destabilizes the entire payphone industry

2. Call Categories Must Be Reviewed Together, Not in Isolation

The Commission recognizes, as it must, that the scope of its mandate to ensure fair payphone compensation applies to all calls. As a matter of logic and equity, as well as Section 276's statutory command, each type of call should generate an appropriate contribution to fair compensation. The Commission tentatively (and correctly) concludes that it clearly must prescribe compensation for all access code, subscriber 800 and debit card calls, because those calls are not currently compensated at all (other than through existing, narrowly applicable prescribed compensation schemes). However, the Commission also seems to conclude that it should prescribe compensation for other types of calls, on which some compensation currently is earned, only if payphone providers demonstrate that they are not already "fairly compensated" for those calls, i.e., "where a government-mandated rate, such as for local coin calls, may not be high enough to be 'fairly' compensatory." Notice, ¶ 16, n. 54. The implication is that each class of calls must be individually reviewed (perhaps on a jurisdiction-by-jurisdiction basis) to determine whether existing compensation levels are "fair" before a given class or sub-class of calls may be included in the prescribed compensation.

This approach is needlessly complicated, and runs a great risk of failing to carry out the Congressional mandate. The Commission's regulations must be designed to "ensure that payphone service providers are compensated for each and every intrastate and interstate call." 47 U.S.C. § 276(b)(1)(A)(emphasis added). Failure to ensure fair compensation for any particular group of calls would be a legal error.

Furthermore, "dial-around" access code and subscriber 800 calls are merely the most obvious examples of inadequately compensated calls. The simple fact is that currently the ability of the payphone owner to obtain fair compensation from virtually every other class of call is severely constrained by government regulation. The rate for the most common type of call, the local coin call, is of course regulated by the vast majority of state public service commissions. Generally, the local coin rate set for LEC payphones also applies to IPPs. Rates for virtually every other payphone service are capped in a majority of jurisdictions, commonly at dominant carrier rates.[9]

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[9] According to a March 1995 survey of state regulation of independent public payphones, in 37 jurisdictions the local coin rates that IPP providers may charge are subject to a state commission-prescribed cap -- usually at the LEC's tariffed local coin rate. Rate caps are pending in another 4 states. Only 8 of the 49 jurisdictions that allow payphone competition do not impose local coin rate caps. See Technologies Management, Inc., Survey of Private Pay Telephone State Regulation, March 1995 at 557-58.

The survey also shows that 29 of the 49 jurisdictions cap intraLATA sent-paid rates, 23 cap interLATA sent-paid rates, 31 cap directory assistance rates (mostly at zero, even though the IPP providers often must pay the LECs for directory assistance calls originating from IPPs), 34 cap intraLATA operator service rates, and 30 cap interLATA operator service rates. Id.

If the Commission does not prescribe a compensation rate for such calls, its regulations must provide a mechanism for determining whether the government-mandated rate allows fair compensation on that call. In order to conserve resources and limit unnecessary sources of friction between federal and state authorities, the Commission should seek to avoid taking an approach that, in effect, requires the Commission to engage in continual review of the particular rates mandated in various jurisdictions for various types of calls in order to determine whether such rates "ensure that payphone service providers are fairly compensated for each and every interstate and intrastate call."

Further, decisions about whether payphone service providers are "fairly compensated" are likely to be made incorrectly if each type of call is considered in isolation from the other types of calls made at a payphone. For example, in several places the Notice suggests that the appropriate measure of "fair" compensation is whether revenue covers the "marginal cost" of a call. Notice, nn. 54, 64. This idea is clearly mistaken. First, cost is not the issue; the statute requires "fair" compensation, which embraces more than cost recovery. Further, reliance on a simplistic marginal cost standard would in any event be a serious error of law and policy. The vast majority of payphone costs are fixed in the short run. If a payphone provider's revenue on each call covered only the marginal cost of that call, no payphone provider could stay in business. Even under a "cost recovery" standard, call revenues must cover a provider's fixed costs as well.

Compensation rates that are prescribed or reviewed in isolation from one another will likely not be "fair" because the Commission will not be in a position to ensure that payphone service providers have a reasonable opportunity to recover all their costs.

APCC believes that the law requires a minimum compensation level on every call in order to break away from the industry's unhealthy dependence on a system of cross-subsidies between calls, where some calls (interstate 0+) must make a disproportionate contribution to cost recovery and fair compensation, effectively subsidizing the use of the payphone by other callers. Such a compensation policy is not only legally required but also is consistent with the Communications Act's policy of ending implicit subsidies. See e.g., 47 U.S.C. § 254(e); Conference Report at 131.

The Commission must develop a system that provides fair compensation for each completed call. Even if the Commission concludes that it can legally continue a system that burdens one class of users, such as interstate 0+ callers, in order to pay for the payphone usage of other users, such as 1-800 callers or people making local calls. APCC believes that a uniform nationwide maximum charge associated with using a payphone, whether to place a local coin call, an access code call, a subscriber 800 call, a "0" call or a directory assistance call, also best accommodates consumer, industry, state and federal concerns It will create an environment of certainty for consumers.[10]

In the discussion below, we demonstrate why a uniform charge prescribed by the Commission appropriately applies to each of the most common types of calls made at payphones. Since the Commission must address the compensation problem for most types of calls, it should do so forthrightly and simply by prescribing a uniform nationwide compensation rate for each class of call made from a payphone We believe the simplest, fairest approach is to prescribe a uniform 40-cent compensation rate that applies to all calls

[10] This program of regulation would be supplemented by a state administered program of requiring the placement of public interest payphones where there otherwise would not be service at rates determined by state regulators. See SectionV below

3. The Commission Must Prescribe a Local Coin Rate(¶¶ 19-22)

In the Notice, the Commission suggests three options for ensuring fair compensation for local coin calls: (1) prescribe a nationwide local coin rate; (2) prescribe guidelines for states to use in establishing a local coin rate; and (3) allow the states to continue setting the local coin rate subject to a complaint procedure. In describing these options, the Commission omitted a fourth option that must be considered. The Commission could simply determine that the market should govern what rates are charged for local coin calls. As discussed below, APCC believes that this option, which is a reasonable corollary to the Congressional mandate to remove LEC payphones from the regulated local exchange rate base, must be adopted if the Commission does not adopt a nationwide local coin rate of 40 cents per call.

The Commission seeks comments on whether it should prescribe a nationwide local coin rate. Specifically, the Notice requests "that commenters identify the specific public interest benefits they believe would result from a nationwide rate, why local rates are inadequate to ensure fair compensation, the impacts of variations among the states in the local coin sent-paid rate on PSPs and the public, and whether those impacts are predominantly local, statewide, regional or national." Notice, ¶ 21.

There are at least two important public interest benefits to be gained from prescribing a nationwide local coin rate. First, the Commission would ensure that interstate travelers using payphones, as well as others whose use of payphones affects interstate commerce, would be able to predict the exact charge at any given location for using a payphone. Second, the Commission would bring stability and predictability to the payphone service industry and the public alike by enabling an economically stable payphone industry to break the cycle of dependency on 0+ commissions and to free itself to ensure "widespread deployment of payphone services". 47 U.S.C. § 276(b)(1).

a. Ensuring Fair Compensation for Local Coin Calls

The data collected by APCC from some 4,000 independent payphones suggests that the average payphone produces roughly $150 in coin revenue per month. A study that APCC presented to the FCC five years ago found that average coin revenue from a sample of IPP providers was $160/phone/month. Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Reply Comments of the American Public Communications Council, filed April 27, 1991, Exhibit 4. While the two samples may not be precisely comparable, it does not appear that there has been any significant increase in coin revenue from IPP providers in the last five years. This should not be a surprising result, since local coin call rates in most states have not increased significantly, if at all, in more than a decade.[11] For example, in Texas the local coin rate was established at 25 cents in 1975. In Maryland, the rate has been capped at 25 cents since 1985. In California, with the highest volume of payphone traffic of any state in the nation, the local coin calling rate has been capped at 20 cents since 1985. IPP coin rates generally have been capped using LEC rates as a baseline.[12]

The states have historically viewed public payphone service as an extension of universal service. Rates at public payphones have been kept, for the most part, artificially low and public

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[11] Postage stamps, by contrast, were priced at 13 cents in 1975, 22 cents in 1985, and currently are priced at 32 cents.

[12] Recently, there has been movement in some states to a 35-cent local coin rate. See below. On the other hand, in some areas, local payphone calls remain at $.10 or $.05.

payphone service is, as a matter of public policy, generally subsidized or at least not required to bear its share of fully loaded costs and/or generate contribution. The local coin calling rate has thus been "subsidized" and held below full costs.

APCC is concerned that there not be any misimpression about the importance of local coin revenue to the economics of the payphone business. Footnote 58 of the Notice suggests that local calls, including operator-assisted calls, generate only one-sixth of payphone revenues. This point has been used to justify an argument against the FCC prescribing a higher local coin rate. See Separate Statement of Chairman Reed E. Hundt. While the one-sixth figure may or may not be a reasonable estimate of the proportionate revenues derived by carriers as a whole from local payphone generated calls, it certainly is not a reasonable estimate of the portion of IPP providers' revenue derived from local calls.[13] Moreover, even assuming the accuracy of this statement, the argument it seems to support is a circular one. If local coin rates are too low, then of course they will produce a relatively small proportion of total payphone-originated revenue. But the mere fact that local coin revenue is low is not a good reason for keeping it low.[14]

To maintain and replenish the stock of payphones and recover the costs of those payphones requires sufficient revenue. It is plain that given the overwhelming preponderance of local coin calling, local coin calls must bear their fair share of the cost recovery and revenue generation. The regulatory alternative is to place the burden of cost recovery on the relatively small

[13] Local calling revenue generally accounts for well oever 50% of an IPP provider's gross revenue.

[14] In any event, whatever the portion of total revenue generated from payphones that is accounted for by local coin revenue, local coin revenue clearly accounts for at least 50% of revenue to IPP providers. It is thus the major single source of operating capital available to IPP providers.

number of coinless calls. As discussed below, compensation for these coinless calls would have to be much higher than otherwise and would have to bear a disproportionate share of the burden of cost recovery and fair compensation in order to offset a low local coin rate and to meet the statutory mandate that there is fair compensation for every intrastate and every interstate call.

Further, there is no obvious basis for distinguishing between the "costs" generated by a local coin call as opposed to a coinless call.[15] Each should bear its share of the costs. Imposing a high per call charge on interstate and/or intrastate coinless calls and allowing these calls to continue to bear the expense of a local coin calling rate that is not bearing its share of costs perpetuates the disparity between the cost causer and the source of the cost recovery.

b. Consumer Convenience Is Promoted by A Uniform Nationwide Local Coin Rate

Further, it is more convenient and less confusing to consumers to have one nationwide rate for local coin calls. The restructuring presents the opportunity to alleviate consumer confusion by imposing a uniform national maximum charge **for the use of the payphone**. In the case of a typical local coin call, this charge for the use of the payphone would include all charges for the call. The same charge for use of the payphone would apply whether the consumer is placing an intraLATA, interstate, or other non-sent paid call (with the applicable long distance or relevant transmission charge also applying). At the same time, having broken PSPs' forced dependence on revenue from interstate 0+ calls, the FCC can adopt "bench mark rates" for interstate 0+ long distance calling and/or take other steps, such as requiring disclosures, to effectively prevent

[15] Arguably the local coin rate should be higher than the rate for a non-sent paid call because of the usage and coin collection costs typically associated with local coin calling. But at a minimum, local coin call compensation should be set by the Commission at a level that is equal to the charge imposed on other callers for the ability to use the payphone. Moreover, in the interest of uniformity it makes sense to have a single charge imposed for all use of the payphone.

overcharging for calls from public payphones. State regulators can continue their regulatory supervision of operator service and transmission service charges at the state level.

At present, callers that travel from one state to another may encounter different coin rates. For example, in one jurisdiction a local coin call may cost 20 cents, while in another, increasingly it may cost 35 cents. There may be additional variations based on the duration of the initial increment. One uniform rate for the initial three minutes of a local call would ensure that members of the public are always able to predict what coins they need to have in order to make a three-minute local call from a payphone

c. It Is the Commission's Responsibility to Ensure Fair Compensation for Local Coin Calls As Well As Other Calls

In most states, the current maximum rate has been in place since the inception of payphone competition. However, a number of states have recently had occasion to examine their regulation of the maximum rate and the basis for the rate. The emerging "consensus" local calling rate in the jurisdictions that have recently revisited the issue is in the range of 35 cents per call. A local calling rate of 35 cents has been implemented in the following states: Illinois, Iowa, Michigan, Wisconsin, Wyoming.

All of these rates have been set in an environment in which LEC payphone operations have not been subject to safeguards to ensure separation of their costs from those of regulated LEC services. In the other provisions of Section 276, Congress mandates that LEC payphones be removed from the local exchange rate base to ensure that they are no longer subject to subsidies from other regulated services. Therefore, it is inevitable that there will have to be a reassessment of local coin rates to ensure that any restrictions on the allowable coin rate are sufficient to permit a reasonable opportunity for LECs and IPP providers to profitably operate their payphone businesses and thus to "promote the widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. § 276(b)(1). This reassessment will occur in an environment in which the costs of LEC payphones are no longer treated as part of LECs' overall "revenue requirement." Thus, if the FCC does not prescribe a uniform local coin rate, state commissions would have to dramatically revise their existing procedures for evaluating proposed rates.

Moreover, in any event, the Act places responsibility for ensuring fair compensation in this new environment squarely on the FCC. To carry out its responsibilities, the Commission cannot rely upon proceedings in other jurisdictions that it hopes will lead to fair results. As the Commission has recognized, after rates had been reassessed by the state commissions, the Commission would have to examine each state decision based on criteria that it would have to establish in this proceeding to ensure that payphone service providers are "fairly compensated" for each local coin call. This process would result in excessive waste of regulatory resources. At best, the Commission would merely postpone the need to evaluate the appropriate rate.

For the reasons set forth above, of the three alternatives outlined above, only the first alternative, prescribing a fair nationwide maximum local coin rate, will satisfy the statutory mandate to "ensure that all payphone service providers are fairly compensated on each and every completed intrastate and interstate call." 47 U.S.C. § 276(b)(1)(A) (emphasis added).[16]

[16] If the Commission does not select this alternative, then it must adopt a fourth alternative not expressly mentioned: mandatory deregulation of local coin rates. This alternative would satisfy the statutory mandate by freeing PSPs (for the first time most jurisdictions) to charge rates determined in the marketplace